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MAD MIDWIFERY: BRINGING THEORY, DOCTRINE, AND PRACTICE TO LIFE

Barbara Bennett Woodhouse*

I. THE PERSONAL AS PROFESSIONAL

As my title betrays, I am writing as a teacher with a very specific and perhaps personal view of the vocation. I am also a scholar and a lawyer, but Judge Edwards' article drew an immediate response from the midwife-teacher in me. To give a thumbnail sketch of Judge Edwards' concerns, as I interpret them, he reasons that law faculties are increasingly populated by pure theorists, that theorists neglect doctrine in their scholarship and teaching, and that they impart to their students a disdain for practice, sending them out unready and perhaps even unwilling to serve as competent and ethical lawyers. Judge Edwards identifies a decline of doctrinal education, defined as acquiring a capacity to use cases, statutes, and other legal texts.¹ He criticizes the new generation of "impractical" professors, those people, often lacking in any practice experience, who subscribe to critical legal studies, critical race studies, feminist legal studies, law and economics, or other "law and . . ." methods or philosophies. He believes they fail students and the profession by neglecting doctrine for theory.² Judge Edwards affirms that theory has its place. The ideal doctrinal class, he

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A Public Policy Initiatives Grant funded by United Parcel Service made possible the Child, Parent, and State course I discuss in this article by supporting research and acquisition of materials, workshops, and training sessions, and assisting with the development of a roster of distinguished collaborators and coteachers in the Philadelphia community. I was also fortunate in developing this course, to find gifted research assistants like Amy Sinden '91 and Cathryn Miller '93, each of whom had intensive background in the area of child protective services. Judith Bernstein-Baker, J.D., M.S.W., formerly Director of Philadelphia's Support Center for Child Advocates and now Director of the University of Pennsylvania Law School's Public Service Program, has been an invaluable collaborator and source of insights and support. Moreover, practicing attorneys from Philadelphia's child advocacy and family law community have contributed immeasurably to the course's success. See *infra* notes 24, 25, and 29. Critical, as well, have been the support and encouragement of my Dean and faculty for broadening the curriculum to include a variety of courses and methods of teaching.

I am grateful to Howard Lesnick and Seth Kreimer for thoughtful comments on this article. Thanks are also due to Debbie Nearey Walsh for secretarial support and Stephanie Hochberg for research assistance.

1. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 57 (1992).

2. *Id.* at 34-37.

suggests, "seeks to integrate theory with doctrine, to show how theory resolves normative problems left open by the authoritative legal texts."³ But theory, in his view, is "generally interstitial. It begins its work where interpretation ends, and not before."⁴ To achieve a balance between theory and doctrine, the impractical and the practical, law schools must achieve a balance, both in hiring and in prestige, between "practical" and "impractical" professors⁵ who will, he assumes, teach more or less as they write.

I share Judge Edwards' concern about the health of legal education and about lawyers as a force in society. I differ, however, in defining the sickness and prescribing the cure, at least when it comes to teaching. In my view, we need to integrate, not to dichotomize and polarize further, the practical and the impractical, the doctrinal and the theoretical.⁶ His critique, and my intuitive response to it, challenged me to examine and articulate where we disagree, based on what I have learned in my five years in the classroom and what it is I hope to accomplish in my teaching. Judge Edwards' remarks also heightened my sense that teaching, not scholarship, may be the endangered activity and that a perception of disjunction between theory, doctrine, and practice impedes the evolution of more inclusive styles of teaching.

Before expanding on my initial response, however, I should introduce myself. After all, a central premise of Judge Edwards' argument is that we professors write and teach what we have lived, whether as savvy practitioners of our craft, careful scholars, or ivory tower theorists.⁷ The personal is the professional.

My resume, when I began law teaching, would probably have made me one of Judge Edwards' preferred hires. My early doctrinal and practical training took place in the traditional law school environment of Columbia in the early 1980s and continued during clerkships at both the trial court and appellate court levels.⁸ I met my first real

3. *Id.* at 65.

4. *Id.* at 66.

5. *Id.* at 62.

6. Much turns on how one defines these terms. I think of *doctrine* as the "what?" and *theory* as the "why?" — of *doctrine* as descriptive of current law and *theory* as normative and undergirding both current and potential doctrines. To the extent Judge Edwards uses the term *theory* to describe abstract discussions without any connections to accrued legal doctrine or concrete experience, I share some of his concerns. But his critique is not limited to abstract exercises. It extends to many methodologies that consciously attempt to integrate theory, doctrine, and experience. See *id.* at 47-50 (including critical legal studies, law and economics, critical race theory, and feminist legal studies within a broad description of impractical theory).

7. See *id.* at 74 (suggesting that those who have practiced law are, at the least, better suited to teach ethical practice of law than theorists hired from graduate schools).

8. The lessons learned from clerking for a skilled trial judge, the Honorable Abraham D. Sofaer of the U.S. District Court for the Southern District of New York, and a truly judicious

clients at Columbia's Child Advocacy Clinic and continued to grapple with practical and ethical issues of lawyering during three years as a litigator in a large firm. During my years in practice, I "billed" almost as many hours representing the homeless residents of Bellevue Men's Shelter as I did defending corporate clients from hostile takeovers.⁹

As a scholar and teacher, my chosen subject matter is children and families. Although I cannot claim a Ph.D. in history, sociology, or religion, I do engage in multidisciplinary scholarship and think of myself as a theorist, both activities that Judge Edwards views with some skepticism. My own scholarship on children's and parents' rights relies not only on discussions of cases, but also on history, sociology, religion, feminist theory, children's literature, and any other tool I find useful in understanding children's place in society and the role of law in defining it. Some of my writing, oddly enough my most interdisciplinary work, may turn out to be "practical" in the sense that Judge Edwards intends, that is, of immediate use to judges and lawyers in deciding and briefing cases.¹⁰ But I concede that most of my scholarship is unlikely to be of this kind of "practical" use to judges or lawyers, unless they feel the need for a dose of theory or are caught in one of Judge Edwards' rare interstitial binds.¹¹ Yet I draw upon my doctrinal education and my practice and clerkship experiences virtually every day, whether in the classroom, in writing, or in thinking about law.

In short, in Judge Edwards' lexicon I am both a "practical" and an "impractical" scholar and teacher. How can this be? Here is one key difference between my perspective and that of Judge Edwards: I am less inclined to view theory, doctrine, and practice as sharply divided categories, or to assume that a professor's modes of scholarship and teaching necessarily mirror each other. I will argue that the divide between theory and practice — that gaping hole which Judge Edwards believes doctrine once occupied — is an unnecessary evil, especially in

appellate judge, Justice Sandra Day O'Connor of the U.S. Supreme Court, are gifts I can only begin to repay in my own teaching and mentoring of my students.

9. I am also beholden to my former firm, Debevoise & Plimpton, for encouraging my work for pro bono as well as paying clients and for supporting my ambitions to become a teacher.

10. See Barbara B. Woodhouse, *Poor Mothers, Poor Babies: Law, Medicine, and Crack*, in CHILD, PARENT AND STATE: A LAW AND POLICY READER (S. Randall Humm et al. eds., forthcoming 1993) (discussing the disjunction between law and medicine in establishing laws and policies on cocaine use by pregnant women).

11. See Barbara B. Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747 (1993) [hereinafter Woodhouse, *Hatching the Egg*] (drawing on Dr. Seuss' *Horton Hatches the Egg* to propose a theory of earned parenthood); Barbara B. Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995 (1992) (offering a revisionist history of two foundational cases on parental rights).

the classroom. I will use this forum to describe and defend a mode of teaching that consciously attempts to bring theory, doctrine, and practice together by structuring "practical" experiences in a classroom setting. This strategy is integral to a way of teaching, and of thinking about teaching, that I will label "midwifery" but that others might characterize in different but equally enabling terms.¹² I add the adjective *mad* to warn you that the project I propose, while great fun, is insanely impractical if measured by dominant standards for success in the profession. It is labor intensive, high risk, low status, and unpublishable.

II. THEORY, DOCTRINE, AND PRACTICE BROUGHT TO LIFE

A. *The Midwife Metaphor, the Filling Station Metaphor, and the Sports Coach Metaphor*

There are many possible metaphors for teaching. The metaphor one chooses depends not only on the teacher's own identity, but also on his or her conception of the relationship between scholarship and pedagogy, the interplay of theory, doctrine, and practice, and especially on the teacher's conception of the teaching and learning *process*.¹³ Judge Edwards depicts teaching as a process in which experts, whether experts in theory or in doctrine, impart what they know and think to students who will internalize it and draw upon it later as they go forth to practice. His discussion calls to mind the metaphor of the classroom as a "universal filling station where students tank up on knowledge that they will 'need' later."¹⁴ Or perhaps it evokes the image of a sports coach who can be expected to coach only the sport

12. The descriptions I have in mind share the ideal of enabling students to bring their own perspectives and values to bear on legal issues and on lawyering. See HOWARD LESNICK, *BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW* 2 (1992) (describing teaching not as imparting answers, but as invoking engagement with critical questions); Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978) (characterizing teaching as encouraging process of self-learning involving the whole person); Catharine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 164 (1988) (describing teaching as helping students to "flourish and grow"); Jenny Morgan, *The Socratic Method: Silencing Cooperation*, 1 LEGAL EDUC. REV. 151 (1989) (describing teaching as encouraging an environment of cooperation); Thomas L. Shaffer, *Moral Implications and Effects of Legal Education or: Brother Justinian Goes to Law School*, 34 J. LEGAL EDUC. 190 (1984) (characterizing the ideal of law teaching as exploration of ethical values).

13. There is a large and growing literature produced by scholars who write about the theory of practice in ways that demonstrate how doctrine, theory, and practice are not separate but integrally connected endeavors. See *supra* note 12; *infra* notes 14, 18.

14. Howard Lesnick, *Being a Teacher, of Lawyers: Discerning the Theory of My Practice*, 43 HASTINGS L.J. 1095, 1095 (1992) (quoting Robert N. Bellah, *The New Religious Consciousness and the Secular University*, DAEDALUS, Fall 1974, at 110, 110). Lesnick's article is one of 17 collected in a symposium issue titled *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992).

that he or she has played. Under this description, it makes sense to assume that professors can only supply the particular skill or octane that they themselves have taken on board — whether it be the impractical or the practical kind.

Many of those who have reflected on the teacher's role, including my colleague Howard Lesnick, question the filling station metaphor, in which students are empty vessels waiting to be filled with "skills" or even "knowledge."¹⁵ Lesnick views his role, rather, as providing a "tank of gas" that sends students on their own journeys of learning.¹⁶ In our conversations about teaching, his remarks not only struck a chord in me but summoned up a matching metaphor — the law teacher serving as midwife to her student's learning.¹⁷ This metaphor captures my sense that the learning process is a collaborative experience, calling for encouragement, structure, and support, but most productive when students push themselves, investing their own creative energy and sweat. My method is a means to encourage them to engage actively rather than to rely passively on me to fill them up with "skills" or "knowledge" to be fed back to me at exam time and almost instantly forgotten. Teaching and learning, when I am successful, invoke intellectual and personal connection on my part as well as theirs. In this process, the three elements that Judge Edwards sees as discrete — theory, doctrine, and practice — are integral and inseparable, and they can only be brought to life through my students' hard labor.

B. *Creating a Hard "Learning Experience"*

At the risk of catcalls and rotten tomatoes, I am going to advocate creating a "learning experience." Before the tomatoes start flying, let me move immediately from the general to the specific and present a concrete example of teaching "theory" and "doctrine" in a "practical" context. Many of my colleagues, both at Penn and elsewhere, are us-

15. Lesnick, *supra* note 14, at 1095.

16. *Id.* at 1102. Perhaps the great Socratic "coach" sees the role as the firming of flabby minds through mental exercise. Both images are enabling.

17. See MARY F. BELENKEY ET AL., *WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND* 217-19 (1986) (describing the "teacher as midwife" as one who practices "maternal thinking," prizing the students' own knowledge and encouraging its growth). In spite of its gendered history, the midwife metaphor should not be construed as confined by gender. Socrates himself described his role in teaching as that of a midwife. See PLATO, *THEAETETUS* 149a-151b (Robin A.H. Waterfield trans., Penguin Books 1987). Midwives, like nurses, can be male as well as female. Cf. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 730 (1982) (disagreeing with "old view that women, not men, should become nurses"). Moreover, many of my male readers who have "coached" a woman through labor and childbirth will understand, through their own experience, the engagement evoked by this role and its emphasis on support and pride in another's creative labor. See Woodhouse, *Hatching the Egg*, *supra* note 11.

ing such experiential techniques with a variety of different subject matters.¹⁸ Judge Edwards would likely approve of these innovations as examples of the "non-Socratic approach" but would assume that their value lay in teaching interpretation of cases, statutes, and regulations and not in exploring theory.¹⁹ I will describe my own attempt and then use this concrete example as a vehicle for challenging some of Judge Edwards' assumptions about the boundaries between theory, doctrine, and practice and the teacher's role in crossing them.

The course, which I call "Child, Parent, and State," consciously aims to bring theory, doctrine, and practice together for my students by providing a concrete experience in which they teach themselves on a variety of levels.²⁰ The course provides an exploration of family policy and of state intervention in the family in the context of child protective services (CPS).²¹ Our raw material is a set of interdisciplinary readings and a selection of cases, statutes, and local court rules. We have structured the course around a simulated CPS abuse and neglect case which we have tried to make as realistic as possible through use of case files, forms, and exhibits.²² After an introduction to broader issues of family policy and an orientation to CPS laws, we plunge into

18. The concept of "experiential learning" is hardly new to law teaching. See Donald B. King, *Simulated Game Playing in Law School: An Experiment*, 26 J. LEGAL EDUC. 580 (1974); William S. McAninch, *Experiential Learning in a Traditional Classroom*, 36 J. LEGAL EDUC. 420 (1986). To name only a few of the examples at the University of Pennsylvania Law School, Ed Baker, Lani Guinier, Ralph Smith, and Susan Sturm use exercises and role playing to explore issues of race and gender, the political process, and employment discrimination. Michael Schill uses problems and case studies to explore property theory and real estate transactions, and Elizabeth Warren brings bankruptcy theory to life in clinical and problem-solving settings. The bright lines between clinical and classroom learning have long ago dissolved as clinical professors developed sophisticated classroom components, see Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Education in the 1990s*, 75 MINN. L. REV. 619 (1991), and, in my school as in many others, classic scholars like Seth Kreimer, Howard Lesnick, and Susan Sturm have developed offerings like the Public Interest Practice Seminar, in which students gather to discuss issues raised by their work in public interest internships.

19. See Edwards, *supra* note 1, at 63.

20. My inspiration for this course on state intervention in the family, which I call "Child, Parent, and State," came from Professors Vivian Berger, Andrew Schepard, and Jane Spinak, who brought similar experiential techniques — then highly innovative — to their teaching of family law and children's law at Columbia Law School in the early 1980s.

21. Although they sometimes overlap with criminal cases, CPS cases are civil proceedings heard in state family or dependency courts. They are governed by state law schemes establishing jurisdiction, standards, and procedures for state intervention, ranging from provision of in-home services to involuntary foster care placements to terminating parental rights. These cases are affected as well by federal statutes, such as the Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.), that use federal spending powers to encourage uniform standards and procedures. See *Suter v. Artist M.*, 112 S. Ct. 1360 (1992) (rejecting argument that requirement of "reasonable efforts" creates independent cause of action under 42 U.S.C. § 1983).

22. This is not the "royal" but the "humble" *We*. In constructing and updating this simulation, I have drawn on resources far beyond my own knowledge and experience. See *supra* note * and *infra* 24, 25, and 29.

the first stage of our Wilson and Williams simulations²³ — an emergency detention hearing to determine whether three children who seem to have been abandoned in a crack house may (or must, or should) be returned to their parent, kept in foster homes, or placed with relatives. Students are assigned by lot to portray the lawyers for the children, lawyers for the parent, the City Solicitor who represents the Department of Human Services (DHS), the DHS social worker, or the children's mother or father.²⁴ The participants arrive at the Family Court²⁵ knowing only the limited and conflicting "facts" in each of their case files. They must locate their clients and opposing counsel, try to discover more about the parents' and children's situation, and reach an agreement, always "bargaining in the shadow of the law" on abuse and neglect that they have studied in preparation for the negotiation.²⁶ If the negotiations break down, an impromptu hearing takes place instead of a colloquy with the court. Captured on videotape, each case unfolds in its own way, providing opportunities for insights as we review how a complex context influences students' perceptions and applications of the relevant statutes, doctrines, and policies, and we hear comments from the judges, reflecting their wealth of experience in court, and their individual perspectives as seasoned advocates for parents, children, or the state.

As the course progresses, we return to the simulation to explore each stage in the legal process. Students rotate from role to role, as we follow the hypothetical Wilson and Williams families over the course of several years, from the emergency detention hearing, through the

23. The Sam Wilson and Sheila Williams cases are substantially similar on their facts, but one involves a single father and one a single mother. The reactions of my students and our guest judges have provided some intriguing insights into differences in our cultural expectations of male and female parenting. I have also found that casting the parents' roles by lot without regard to sex has offered not only insights into the client's experience of powerlessness in the courtroom, but also has helped to surface issues of gender that we might not otherwise have noticed.

24. I have limited enrollment to 30 students: six groups, each with five roles, seems the maximum feasible number for adequate feedback and supervision. Part of our orientation to child protective services involves training in "risk assessment" tools used by social workers, with the assistance and advice of faculty from the University of Pennsylvania School of Social Work. Casting law students as social workers has helped them understand the tensions involved in working as a law-trained professional in a setting where your colleagues may be socialized to an entirely different model of "benevolent" intervention, one much less concerned with rules and process.

25. We designate one room a waiting room and another room the courtroom, and negotiations take place in crowded hallways and common areas, just as they do in the Philadelphia Dependency Court. Our guest "judges" are all attorneys from organizations such as the City Solicitor's Office, Community Legal Services, Public Defenders, Juvenile Law Center, and Support Center for Child Advocates, who practice in Dependency Court.

26. The parent is instructed to forget whatever CPS law he or she has learned and to assume a history of powerlessness and distrust of legal process and authority.

adjudicatory and dispositional phases, to a petition to terminate parental rights and place the children in permanent adoptive homes. Again, guests from various organizations, who are familiar with life in Philadelphia's Dependency Court, are invited to provide commentary at each stage.²⁷

The Wilson and Williams cases form the backbone of the course, along with more traditional classes in which we engage in doctrinal analysis of state law and Supreme Court cases, fleshing out the issues, controlling laws, and substantive doctrines. Theory is ever present. Because many concepts embodied in doctrine and statute — like "abuse and neglect," "family privacy," and state "intervention" — are so clearly contingent in culturally constructed values, students are inevitably pushed to examine the "why?"²⁸ Why do we as a society define "abuse" or membership in the "family" as we do — and what racial, religious, cultural, and class perspectives color these definitions? Why do we assign responsibility for children among parents, the community, and the state as we do? What theories of the relationship between individual, family, and state undergird these choices? And what are the possible alternative visions that compel some of my students violently to protest and others vigorously to defend existing doctrine and its statutory and caselaw descriptions of relations between child, parent, and state?

To place these doctrines and theories (and the complexities behind the making of public law) in wider social context, we set aside a number of classes for "Conversations with Policy-Makers." These guest speakers, and the readings that I assign for these conversations, change from year to year.²⁹ Many of the guest experts hail from disci-

27. In addition to the guest judges, *supra* note 25, we invite panelists from practice to discuss issues of ethics and professionalism in lawyering for children and parents and in representing the state. Increasingly, students in this course have had some CPS experience or are currently in clinical or public service placements.

28. I have at my disposal a vast range of resources for exploring these "theoretical" issues, from explicitly theoretical pieces like Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 MICH. J.L. REF. 835 (1985), to sociological studies like *The Ghetto Underclass: Social Science Perspectives*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 8 (William J. Wilson spec. ed., 1989), to documentaries like *The Unquiet Death of Eli Creekmore* (KCTS television broadcast, Seattle, Wash., Oct. 1987), to students' personal experiences growing up in cultures and communities whose family structures and definitions of appropriate parenting exist outside the doctrinal norms. See Paula D. Smith, *Greater Expectations: How Dependency Law Undermines Family Independence and Ways to Revise the System To Help Families Help Themselves* (1993) (unpublished manuscript, on file with the author).

29. In 1992, for example, with health care reform prominently featured in the presidential campaigns, our policy focus was on maternal and children's health care and preventive interventions, reflected in many of the policy readings gathered with the assistance of Cheryl Hardy '94. Policymakers included the Interdisciplinary Community Health Project, a task force of law, nursing, medical, dental, and social work students, faculty, and community residents who conducted a health census in a nearby housing project; Lucy Hackney, Director of Pennsylvania

plines other than law. They describe their attempts — through their own work, through program development, through litigation, legislation, or promulgation of professional standards — to shape and alter the direction of family law and family policy. In addition to their written case files, students must also write a paper on some topic of their choosing. Many choose traditional doctrinal subjects; others examine issues of practice, policy, or theory. But I encourage all of them to combine elements of each area and to draw upon prior experience and education. Our guests from practice and policy fields provide a valuable continuing resource, advising students in defining critical issues and researching their papers.

As Judge Edwards notes, any number of subject matter areas (labor law, environmental law, commercial transactions) can serve equally well as proving grounds for students' acquisition of a base of knowledge and skills — and, I would add, an understanding of theory — necessary to becoming a lawyer and transferable to other areas.³⁰ CPS cases provide an especially challenging proving ground. They involve multiple parties, detailed statutes, and difficult issues of constitutional law, political and social science, and moral theory. They combine elements of civil and criminal proceedings.³¹ They are inherently interdisciplinary.³² They teach attention to both statute and case law, since both are key to determining whether a detention is authorized by state law, whether it is constitutional, and what standard of proof or measure of process is due. Using practical immersion in a complex and ambiguous set of facts, even in a hypothetical case, is an invaluable teacher's aid. This kind of hard learning experience demands close reading of controlling statutes, case law, and court rules.

Partnership for Children, who described the challenges and compromises involved in getting a children's health insurance bill through the legislature in Harrisburg, Pennsylvania; pediatric psychiatrist Anthony Rostain, who taught a class on family violence complete with case studies from the Child Guidance Center of Children's Hospital of Philadelphia, giving us insights into prevention as well as posttrauma interventions; JoAnne Fischer, founder of the Maternity Care Coalition, and Ralph Smith, founder of the Philadelphia Children's Network, who talked about reducing barriers to care through community-based services and targeted programs like the new federal Healthy Start demonstration project; and Joan Goodman of the University of Pennsylvania School of Education and Emily Buss of the Juvenile Law Center, who discussed family preservation and debated the state of our knowledge about children's development and what are safe or unsafe, healthy or unhealthy environments.

30. See Edwards, *supra* note 1, at 57-58.

31. The same nexus of fact often triggers criminal prosecution of a parent for abuse or neglect in addition to a civil CPS proceeding. See *Baltimore Dept. of Social Servs. v. Bouknight*, 493 U.S. 549, 561-62 (1990) (recognizing possibility of subsequent criminal prosecution). Moreover, the deprivation of liberty involved in removal of a child or termination of rights is so serious as to involve significant, although not identical, constitutional protections. See *Santosky v. Kramer*, 455 U.S. 745 (1982).

32. See *infra* notes 49-50 and accompanying text.

Short of actual client representation, nothing focuses a student's attention like the eye of the camera, a well-prepared opposing counsel, and the scrutiny of a "judge." Most students prepare intensively and *re-member* and *deepen* the lessons they learned at each stage, as we build from one stage to the next.

III. BRIDGING THE DIVIDE BETWEEN THEORY AND PRACTICE

What has my Child, Parent, and State course to do with Judge Edwards and *The Growing Disjunction Between Legal Education and the Legal Profession*? It should reassure Judge Edwards and others who share his concern about the academy's commitment to training young lawyers to serve underrepresented clients.³³ By bringing the theoretical, doctrinal, and clinical traditions together in one course that focuses primarily on poor families, my hope is to convey that this subject matter and these clients deserve the highest quality of lawyering — whether in the form of theoretical and doctrinal scholarship, classroom discussion, or direct representation. Students who take this course, which is offered as part of the traditional rather than the clinical curriculum, are both inspired and positioned to serve a significant and pressing need,³⁴ whether they become academics, private attorneys, or public interest advocates.³⁵ The popularity of our public interest courses³⁶ and the wide support for the University of Penn-

33. See Edwards, *supra* note 1, at 67-72 (deploring the lack of commitment to pro bono work and noting many institutional disincentives erected by private firm practice).

34. A projected 550,000 children will be in foster care, typically under court supervision, by 1995. See NATIONAL COMM. ON CHILDREN, FINAL REPORT, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES 284 (1991). Judges in overcrowded family and dependency courts have as little as 10 minutes to give to each child's case that comes before them. *Id.* at 283 (quoting The Honorable Paul Boland, presiding J., Los Angeles County Juv. Ct.). In Philadelphia in 1991, a staggering one out of 12 children between one and four years old were under DHS supervision. PHILADELPHIA CITIZENS FOR CHILDREN & YOUTH, OUR VILLAGE, OUR CHILDREN: A REPORT TO PHILADELPHIA ABOUT ITS CHILDREN 4 (1991). As a result of *T.M. v. City of Philadelphia*, settled in 1990, Philadelphia's children gained the right to representation in abuse and neglect proceedings, and by the end of 1992, approximately 7600 children whose cases were in dependency court had been assigned attorneys: 6000 from the Defender Association of Philadelphia and 1600 from the private bar and public interest firms. JUVENILE LAW CENTER, 1992 ANNUAL REPORT 4 (1993).

35. Some students go to government or public interest organizations whose work revolves around families and children. A few may go into family practice. Many others, however, go on to work for large firms doing general practice but take on children or parents as pro bono clients. Most jurisdictions have organizations that recruit and give practical support to pro bono family advocacy. Examples include Philadelphia's Support Center for Child Advocates and New York City's Lawyers for Children.

36. Interview with Gloria Watts, Registrar, Law School of the University of Pennsylvania Law School (May 20, 1993) (student demand high for public interest courses); Interview with Susan Toler, Esq., Assistant Director for Public Interest, Penn Law Career Planning & Placement (May 20, 1993) (student demand for public interest jobs vastly exceeds supply); see also Befort, *supra* note 18, at 622-23 (reporting number of schools with increased demand for clinical

sylvania's innovative Public Service Program should confirm Judge Edwards' intuition that ethics and altruism are not dead in the contemporary law school or the contemporary law student.³⁷ My description of this course, in addition, illustrates a number of broader points about the relation of pedagogy to practice, which I will explore in greater depth below. First, it suggests that teachers can and should learn to navigate the divide between theory and practice. It also suggests that practical and impractical scholars can and do teach not only doctrine and theory, but doctrine and theory in practice. Further, it suggests that professors are not limited or confined by their *own* practice experience but can bring up-to-the-minute experience into the classroom through collaboration with skilled practitioners. Finally, the course is frankly predicated on the idea that multidisciplinary studies are not a detour but an increasingly essential component of the core learning necessary not only to *thinking* but to *practicing* ethically and effectively.

A. *The Interplay of Theory, Doctrine, and Practice*

My concept of teaching assumes that theory is not merely interstitial to lawyering, any more than doctrine or practice is interstitial or inferior to theory. Only a fool would quibble with Judge Edwards that theory alone cannot make a lawyer. The analogy to practicing medicine without studying anatomy is hardly necessary to drive this lesson home. If you have ever attempted to brief or try a case or to draft a document, you have learned it already, the hard way. As teachers, we can construct early learning "experiences" that push students to invest sweat equity in understanding that theory and doctrine are meaningless without practical context. These experiences need not be lengthy. They can be completed in as little as five minutes. For example, when teaching *Lassiter v. Department of Social Services*,³⁸ which addresses whether due process requires that a parent be represented by a lawyer in a termination of rights proceeding, rather than discussing the application of the *Mathews v. Eldridge*³⁹ test, I ask the

courses); Ted Gest, *Doing Good Is Doing Well*, U.S. NEWS & WORLD REP., Mar. 22, 1993, at 60, 60-61 (reporting growth in public interest courses and public service activity in law schools).

37. Edwards, *supra* note 1, at 70-71. The University of Pennsylvania's Public Service Program requires each second- and third-year student to complete 35 hours per year of public service and has provided a model for other schools, including Columbia Law School. PUB. SERVICE PROGRAM ANN. REP. 1993 (Public Serv. Program, Univ. of Pa. Law. Sch., Philadelphia, Pa.) (reporting that 21 schools now have similar programs, a tenfold increase since Penn's program was initiated three years ago); Gest, *supra* note 36.

38. 452 U.S. 18 (1981).

39. 424 U.S. 319 (1976). The *Mathews* test, used to determine what process is due in a given context, involves balancing the risk of an erroneous deprivation of rights and the value of the

students to put down their casebooks and take turns role playing Abby Lassiter (a mother with a grade school education) as she attempts to conduct a direct and cross-examination.⁴⁰ This exercise, in addition to putting the doctrinal test in concrete context, reminds students that command of doctrine is not enough. For students who have not had trial practice courses, it is a potent taste of powerlessness, encouraging a fuller exploration of the theories implicated in the *Mathews* doctrine.

The notion that fluency in practice and with legal texts must be built on a foundation of theory is harder to demonstrate but equally important. Judge Edwards approaches attention to theory and attention to authoritative texts as if they were mutually exclusive pursuits. In practice, however, it is theory that provides a framework for lawyers' and judges' interpretations of authoritative texts. Judge Edwards seems to say that theory matters only when text does not supply a clear answer — apparently he considers a clear textual answer to be a *fortiori* conclusive because it is binding as a matter of doctrine. It is theory, however, that lawyers and judges draw upon to distinguish between a law that is "binding" as a matter of doctrine, and one they accept (from their critical perspective) as "right." If theory were merely interstitial, there could be no growth from *Plessy v. Ferguson*⁴¹ to *Brown v. Board of Education*,⁴² because it is only through the lens of theory that formerly clear and easy questions, with answers that are hallowed by precedent and tradition, begin to look muddy and hard.

For myself and my law students, "theory" is a fancy word for describing the tools we use to integrate what we learn about law and lawyering into a normative framework of values, a process essential to being human beings as well as to being lawyers. A large part of my job as teacher is to help my students examine this internal dialogue between doctrine and theory, with all its analytical and ethical implications for their lives as lawyers. Thus, I consider all three components of the course — doctrinal study of caselaw and statute, our simulated Williams and Wilson cases, and our conversations with policymakers — as integral to the exploration of theory. Theory is essential to students' developing the capacity to interpret and deploy authoritative

additional proposed safeguards against the government's interests in avoiding these additional burdens. 424 U.S. at 335.

40. A passage of transcript illustrating her unsuccessful struggles to articulate nonleading questions and her helpless frustration at the Court's interruptions are reprinted in the Supreme Court opinion. *Lassiter*, 452 U.S. at 54 n.22.

41. 163 U.S. 537 (1896) (holding that separate but equal facilities for the races did not contravene the Equal Protection Clause and noting the long history of segregated schools).

42. 347 U.S. 483 (1954) (overruling *Plessy* and reexamining segregated education through the lens of evolving social conceptions of equality).

texts and to formulate and interpret policy, just as the interpretation of texts and the practical experience gained through deploying them seem to me to be essential to students' developing a theoretical foundation for thinking about family law and policy and their own choices as lawyers.

B. *Can Theoreticians Teach Doctrine?*

Judge Edwards' concerns are grounded in a second assumption, one that I fear could become a self-fulfilling prophecy: that theoreticians do not stoop to teach doctrine. Stating the issues, as he does, in terms of a sharp dichotomy between those who write and teach impractical theory and those who write and teach practical doctrine, risks reinforcing rather than reducing the disjunction that troubles Judge Edwards. I agree completely with his observation that doctrine is not easy and that most law students do not "acquire doctrinal skills on their own."⁴³ But is it really true that a new, ascendant breed of theorists disdains the teaching of doctrine?

I wonder whether a survey of former clerks can accurately establish whether their teachers taught them doctrine or only theory. Every year, without fail, some of my second- and third-year students claim that they never got to substantive due process. Standing? Never heard of it. If I did not know better, having just lunched with theoretician colleagues who described teaching doctrine in their classes, I too might be indignant. But I suspect that even Judge Edwards' "nihilist scholar, who believes that texts are infinitely plastic and subjective,"⁴⁴ recognizes the need to teach students to analyze problems doctrinally and deploy doctrine effectively, if only to enable them to play the game. I confess that I believe texts are plastic, subjective, and contingent. But I *certainly* do not teach my students to disdain practice or ignore doctrine. I love them, their future clients, and the lawyer's craft far too well. I suspect the "nihilist impractical scholar" who teaches no torts in Torts and no contracts in Contracts may be the "welfare queen" of pedagogy, an imaginary miscreant students love to hate, in order to avoid taking responsibility for their own learning. There may be a grain of sincerity, however, in students' memory lapses; they tend to remember with crystal clarity the doctrines they mastered for their first-year moot court arguments. This may be a testament to the staying powers of experiential *learning*, but it does not necessarily follow that doctrinal *teaching* is dead in the American

43. Edwards, *supra* note 1, at 40.

44. *Id.* at 59.

law school, murdered by an overdose of law and economics, critical legal theory, and feminist jurisprudence.

C. *Can Impractical Scholars Teach Practice?*

A third premise of Judge Edwards' essay, which seems similarly problematic, is the premise that law professors' capacity to harness a "practical" perspective is a function of their own years in practice. This charge cuts across the ideological spectrum because there are many gifted doctrinalists who have never been near a courtroom. Moreover, even those of us who have practiced and clerked find our experiences growing dim and dated.

I agree with Judge Edwards completely that a professor who disdains practice and practitioners will have a difficult time motivating and mentoring law students, just as a professor of medicine who disdained curing sick people would find few acolytes. It certainly helps to have personal experience, but one need not have tried many (or even any) jury trials or closed many (or even any) megadeals in order to bring a practical perspective to law teaching. The filling station metaphor — that we deliver to students' empty tanks only the octane of knowledge that we ourselves have taken on board — needlessly confines the learning experience to our own individual limitations.

As my Child, Parent, and State curriculum illustrates, a teacher, practical or impractical, who respects and values practical perspectives can learn from and work collaboratively with practitioners to enrich her own and her students' education. Moreover, many of the students in any given classroom have practice perspectives of their own, developed in their representation of clinic clients or in pro bono work.⁴⁵ I begin with the assumption that my family law students are not passive recipients of my knowledge but active participants in cases of their own that challenge them (and me) to grow practically, doctrinally, and theoretically. The metaphor of the midwife reinforces the notion that a teacher's role includes working with students' own experiences, pushing them to bring theory, doctrine, and practice to bear in and outside the classroom.

The process of bringing these practice perspectives into the class-

45. In addition to the Public Service Program, Penn students have opportunities to work with family law clients through our Civil Practice Clinic and through internships under the Public Interest Practice Seminar. In 1992, responding to the burgeoning numbers of indigent parents without access to attorneys for custody and support cases, Penn students Cathryn Miller, Stephanie Gonzales, Maria Gattuso-Sanchez, Kam Wong, and Joel Greene founded the Custody and Support Assistance Clinic (CASAC), a student-run initiative under Community Legal Services' supervision that in its first semester assisted some 80 poor parents appearing pro se. See PUB. SERVICE PROGRAM ANN. REP., *supra* note 37.

room is not painless: it involves venturing out of the safety of the academy and getting to know an alien world of bar, bench, and judicial process. Collaboration demands coordination and advance planning. You cannot coteach from last year's outline. There is also a measure of discomfort in surrendering the power of the podium and admitting to your students that you are not the resident expert on *everything*. When invited to share their practice experiences, students raise questions for which you have no prepared answers. But to believe that a professor must operate solely out of his own experience and theoretical orientation not only oversimplifies but stands as a barrier to fruitful collaboration between lawyers and academics, to the detriment of both. The notion that law schools must hire only doctrinalists to teach doctrine and practitioners to teach practice is as pernicious as the belief that only Ph.D.s can master or teach theory. Both attitudes lead to an impoverished idea of the relationship between lawyering, teaching, and scholarship.

D. *Is It Really Impractical to Be Interdisciplinary?*

My final point addresses critics of "law and . . ." who argue that an interdisciplinary approach detracts from the "training of practicing lawyers."⁴⁶ Judge Edwards, discussing interdisciplinary studies, writes, "[m]y view is that if law schools continue to stray from their principal mission of *professional* scholarship and training, the disjunction between legal education and the legal profession will grow and society will be the worse for it."⁴⁷ Increasingly, however, literacy in a variety of disciplines is an inescapable reality compelled by doctrinal developments, as well as by legal realism. It cannot be dismissed as simply a professorial predilection for dabbling. To the contrary, at least in family law, interdisciplinary studies are not a distraction from, but a critical part of, modern lawyering. It would be futile to isolate legal doctrine and practice from psychology, economics, sociology, religion, and history because family law doctrine itself speaks in terms of children's "best interest," the "primary caretaker" presumption, the "psychological parent," "equitable distribution" of assets at divorce, and it identifies historic "tradition" as the constitutional touchstone.⁴⁸

46. Edwards, *supra* note 1, at 40 (quoting Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1129 (1981)).

47. Edwards, *supra* note 1, at 41.

48. See HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 20.1 (practitioner's ed. 1987) (showing that determinations of "best interest" requires input from other fields); *id.* § 20.4(b) (showing that application of the "primary caretaker" presumption involves examination of family systems); *id.* § 20.4(c) (showing that concept of the "psychological parent" involves examination of psychological attachments and how parents'

How can literacy in these disciplines detract from the training of practicing lawyers when the overwhelming majority of CPS, divorce, and custody cases are resolved outside the courtroom through counseling, negotiation, and mediation?⁴⁹ Interdisciplinary studies *are* my students' *professional* training.

Perhaps critics who miss the increasingly interdisciplinary nature of law are prisoners in ivory towers of their own, lulled into assuming that law schools' primary function is to train those lawyers they see before them in federal district or appellate courts. When I look at my Child, Parent, and State class, I see not only future federal court advocates and drafters of sophisticated documents, but also future negotiators, family court judges, members of bar committees on law reform, legislators, counselors, mediators, teachers, and even future parents.

I am not suggesting that my students must earn double or triple degrees to engage in these essentially interdisciplinary activities any more than I would hold that a degree in the nonlaw discipline is a prerequisite for writing interdisciplinary scholarship. If this were true, we family lawyers would need not double but triple or quadruple degrees before daring to speak authoritatively about many critical issues that defy disciplinary boundaries. Surely, the lessons of interdisciplinary study will be lost if lawyers or legal scholars become so timid about their ability to learn from and collaborate with colleagues in other fields that they abandon the project of incorporating interdisciplinary materials and insights into a *legal* perspective. As a teacher, I am convinced that one of the skills I should be honing in myself and my students is the ability to think, read, and research critically and to know when to turn to others for consultation and advice.⁵⁰ Nor must acknowledgment of the importance to law of interdisciplinary studies necessarily lead to a world of hyperspecialized law professors who

conduct affects these attachments); *id.* § 16 (discussing analysis of economic issues of "equitable distribution"); see also *Michael H. v. Gerald D.*, 491 U.S. 110, 127 & n.6 (1989) (Scalia, J., plurality) (opining that due process rights of families are defined by historic tradition).

49. See Robert H. Mnookin et al., *Private Ordering Revisited: What Custodial Arrangements Are Parents Negotiating?*, in *DIVORCE REFORM AT THE CROSSROADS* 36, 37-38 (Stephen D. Sugarman & Herma H. Kay eds., 1990) (exact statistics unavailable but authorities agree that most custody cases are resolved informally). As Judge Edwards himself has observed with some unease, over 90% of civil cases settle before trial. Harry T. Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 HARV. L. REV. 668, 670 (1986).

50. No modern practice seminar for family law professionals is without its experts in psychology, sociology, and economics. The American Association of Law Schools' Family Law Section Panel in January 1993, for example, featured two psychologists and a lawyer who had coauthored a book with a psychologist. One promising academic development is the growth of interdisciplinary seminars, in which scholars with a shared subject matter or focal point bring their works in progress before a critical audience of peers from other disciplines. All of these are means of acquiring the expertise and perspectives of other disciplines from the perspective of one's own discipline and training.

teach only narrow courses in pure economics and political science and who spend their time "writing books and articles that, *ex hypothesi*, could be better written" by others, as Judge Edwards suggests they are now doing.⁵¹ The purpose of an interdisciplinary approach, at least in my classroom and scholarship, is to bring critical perspectives to bear on the study of law, not to supplant law as the focal point of our studies. To return to the metaphor of the midwife, interdisciplinary perspectives encourage students and professors to engage, to connect learning and teaching law with their own lives as well as others' lives.

IV. THE MADNESS IN MIDWIFERY

Now comes the madness to my method. Crossing the divide between theory and doctrine and relating both to the practice of law is hard and time-consuming work. It is also unpublishable. Tellingly, Judge Edwards dedicates his closing section to the risks to associates of devotion to pro bono work. He says nothing about the risk to scholars of devotion to teaching. Just as practicing attorneys are told they have only a finite number of hours to divide between their paying and their nonpaying clients, professors may come to believe they have only a finite number of hours to allocate between their publishable and their unpublishable work. The catchy phrase "Bill or Be Banished"⁵² is but a play on the words "Publish or Perish."

In elite institutions today, time spent on developing pedagogy is fast becoming the professor's pro bono work — something extra, done for love, and in the face of formidable institutional disincentives.⁵³ Perhaps the shrinking horizon of teaching, and not the dichotomy between theory and doctrine or between practical and impractical, most

51. Edwards, *supra* note 1, at 40. Judge Edwards quotes and discusses Professor George Priest's predictions that "[t]he law school curriculum will come to consist of graduate courses in applied economics, social theory, and political science." *Id.* (quoting George L. Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. LEGAL EDUC. 437, 441 (1983)). Again, I am not sure Judge Edwards' concern reflects current realities, so much as a fear about the ultimate direction of a trend that likely is self-correcting.

52. *Id.* at 67 (quoting former law clerk).

53. I have no intention of joining the debate over whether scholarship has "run amok," or is "barely ambulatory," but note only that critics on both sides agree that tenure and prestige at elite schools depend on scholarship, not teaching. See David Gregory, *The Assault on Scholarship*, 32 WM. & MARY L. REV. 993, 995-96 (1991) (arguing that law schools emphasize scholarship, though remarking that even scholarship is "barely ambulatory"); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990) (calling for greater balance of components for tenure); see also John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343, 354 (1989) (citing DEREK C. BOK, *HIGHER LEARNING* 77 (1986) (asserting that teaching suffers because of emphasis on scholarship of either the theoretical or doctrinal type)); Marin R. Scordato, *The Dualist Model of Teaching and Scholarship*, 40 AM. U. L. REV. 367 (1990) (arguing that teachers ought to do either teaching or scholarship, but not both).

threatens to disjoin the academy from the profession. Like the law firm obsessed with billing hours rather than instilling a commitment to service, the modern elite law school risks falling into its own version of creeping materialism when time and energy spent on innovative teaching or on mentoring students is considered, by definition, time lost to the real work of academicians — production of printed pages of scholarship. The threat to legal education of this brand of materialism all too easily crosses the divide between theory and doctrine, and the tensions it creates between the teacher and scholar in each of us threatens the communal life of the law school. Again, the divide is in many respects self-inflicted. Teaching and writing need not become a zero-sum game.⁵⁴ Energy devoted to teaching is not necessarily taken away from scholarship, or vice versa. In my experience, each feeds the other. As for time spent teaching and learning from practitioners, it helps keep us a little more honest, a little less useless, and a little wiser than we might otherwise become.

Experiential midwifery along the lines I suggest, however, is not only unpublishable; it is also unglamorous. The “hard learning experience” of this method looks deceptively simple when compared with our stereotypes of the Socratic method. Like midwifery, the midwife style of teaching may seem to lack flourish and authority. The Socratic master commands the podium as the high class surgeon commands the operating theater. The Socratic master, with a deft twist of the forceps or slice of the scalpel, extracts the infant idea from the student’s muddled brain into the bright light of analytical discussion. Midwifery, by contrast, risks being taken for granted as it seems to involve little obvious skill — any idiot could stand passively by and tell someone else to “push.” Not surprisingly, the parent of the idea brought forth through long and unexciting labor not only cherishes the idea as her “own” but most likely exclaims: “Look what a miracle I accomplished,” not “Look what a skillful point the professor accomplished with me.”⁵⁵

The experiential mode of teaching I propose is painfully low status in another way. Like bringing the perspectives of midwifery into the

54. Judge Edwards agrees, but only to the extent that the professor is both writing and teaching doctrine, not “pure theory.” Edwards, *supra* note 1, at 62 n.77. I dissent from this seemingly arbitrary dichotomy between theory and doctrine. See section III.A *supra*.

55. This brings to mind another of Professor Lesnick’s “observations” about the distinction between “using things to teach people” and “people to teach things.” Lesnick, *supra* note 14, at 1096. Done well, midwifery aims at the first model, using structured experiences to teach people. The Socratic method, done poorly or without compassion, can embody the second model, in which students are used instrumentally (as things) to teach points of law. See Morgan, *supra* note 12, at 153 (asserting that Socratic method teaches that manipulating people is an acceptable form of behavior).

surgery, bringing practice perspectives into the traditional classroom may please neither the classic nor clinical faculties. Why waste expensive professorial talent on a half-baked clientless clinic? Of course, the kind of simulations I suggest incorporating in traditional courses are no substitute for real client representation, and I have too great a respect for the craft of clinical teaching to pretend that such "learning experiences" are a substitute, much less a match, for supervision by skilled and experienced clinical professors. My goal is to draw upon clinical methods to bring essential context into my classroom. In the perversely hierarchical world of legal education, however, clinicians who attempt to build bridges to the "traditional" side of the academy, while often viewed with suspicion, are at least seen by their tenured colleagues as reaching "up." The same is not necessarily true of traditional professors who attempt to bring clinical learning styles into the classroom. They risk being viewed as reaching *outside* the arena of doctrine and theory to borrow ideas from a setting where supervisors and students go to *do* law and not to teach or learn doctrine and theory. Judge Edwards goes some way toward erasing this artificial division when he asserts that doctrine can be taught in clinics as well as in classrooms.⁵⁶ I would add that clinics can and do teach theory. In fact, clinicians appear to be far ahead of their mainstream faculty colleagues in thinking and writing about the theoretics of their practice and the pedagogical insights of their theory.⁵⁷

Perhaps the greatest threat to teaching as midwifery, however, is not the questionable status of experiential teaching or the time it takes, the devaluation of doctrine or the ascendancy of theory, but the stigma of departing from the dominant male norm. I used the gendered label midwifery intentionally, to express a style of pedagogy available to all, but carrying a highly feminine cultural description. Whether you blame it on patriarchy or *The Paper Chase*, culture has shaped an image of the law professor that our students expect and that we expect of each other. The dreaded "Professor Kingsfield" may be no more than a caricature of a stereotype, but he exerts an enduring unconscious power. Kingsfield is the masculine model that delegitimizes the feminine one. *He* instructs while *she* creates a learning environment. *He* is commanding while *she* is persuasive.⁵⁸ *He* leads while *she* is open to following. *He* is relentlessly analytical while *she* is pliantly perspec-

56. Edwards, *supra* note 1, at 62. Judge Edwards urges that doctrine be taught well wherever it is taught, including in clinical offerings.

57. See *supra* note 14.

58. Emily Fowler Hartigan sees law as a "blessing[] . . . a gentle draw, more than a compelling force, an invitation more than a command." Emily F. Hartigan, *The Power of Language Beyond Words: Law as an Invitation*, 26 HARV. C.R.-C.L. L. REV. 67, 88-90 (1991).

tival. *He* prizes the objective while *she* attends to the subjective. *He* is tough and *she* is gentle. *He* skewers analytical flabbiness with a sharp, new hypothetical while *she* pushes gently with a follow up question or with reflective listening. *He* is teaching you to think like a lawyer. *She* is acting like a mother.

I am not arguing here that one of these models is correct and the other is flawed. Each has its place. As a law student, I admired and learned from gifted Socratic teachers like Curtis Berger, Louis Henkin, Al Hill, and Willis Reese, and I often find myself speaking in their remembered "voices" (especially Al Hill's). Nor do I assume that men never favor the feminine or women the masculine model. I argue only that the motherly is not per se invalid and may even be better for some students and some subject matters. I am persuaded, and research suggests, that many students (and not just female students) flourish under a style that is more archetypically feminine than masculine.⁵⁹ There is a certain type of Socratic method that is wonderful at pitting the fine mind of the teacher against the fine mind of the student. But it leaves many students (and teachers) feeling strangely alienated, uncomfortable with its emphasis on competition, personal brilliance, and acontextual analysis. In my role as midwife, I work hard to dissolve what, for some students, is an unnecessary pedagogical barrier between legal education and lawyering and between doctrine, theory, and practice. When I design and assign to my students a hypothetical client to care for and defend — whether in the Child, Parent, and State course I described above or in shorter exercises like the prenuptial agreements and moot courts I use in my large classes — I am continually rewarded by seeing students who have been quiet observers suddenly blossoming into vocal advocates for their imaginary clients, bringing sharp analytical skills to bear on issues that now seem very pressing and real. The teacher as midwife takes what has come falsely to be known as the "feminine" ethic of care and connection⁶⁰ and, instead of marginalizing it, uses it to inspire and engage

59. See Michelle Fine & Lani Guinier, *Becoming a Gentleman: The Education of Women at the University of Pennsylvania Law School* (1993) (unpublished manuscript, on file with author) (collecting studies on women's law school experience and reporting on a study at the University of Pennsylvania). For those interested in exploring research and writing on issues of teaching style, gender, and the law school experience, see Jeffrey J. Brookner & Kent D. Syverud, *A Consolidated Bibliography for New Law Teachers* (Nov. 1992), in 1993 AALS WORKSHOP FOR THE NEW LAW TEACHERS 67 (1993). In addition to discussions of gender issues, the bibliography covers research on a wide variety of topics relating to teaching methods and scholarship.

60. See Joan C. Tronto, *Beyond Gender Difference to a Theory of Care*, 12 SIGNS 644, 657-59 (1987). I agree with many who contend that this ethic is far from exclusively female, but has not been acknowledged or prized in legal tradition defined through a traditionally "male" acontextual perspective. See Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS. L.J. 1039 (1992); Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43

both himself and his students.

Thus, in spite of the risks of midwifery, its madness may yet prove contagious. This approach to teaching and conceptualizing law provides one way, although not the only way, to bridge that divide between theory, practice, and doctrine that troubles Judge Edwards and many critics of modern legal education. My discussion suggests that the disease of disjunction between legal education and the profession is not caused by too much theory or too little doctrine and practice, but by too little attention to their essential interplay in a complex and interconnected world. The cure I prescribe is not further polarization but a more thoughtful integration not only of theory, doctrine, and practice in the classroom, but of the complementary roles of scholar, teacher, and lawyer in ourselves and in our understanding of each other.

HASTINGS. L.J. 1175 (1992); cf. Woodhouse, *Hatching the Egg*, *supra* note 11 (asserting that caring qualities are part of vocabulary of fathers as well as mothers).